



## Problems of Migrant Workers Overseas Experienced Gender-Based Violence and their Legal Protection

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### ABSTRAK

Pengiriman atau penempatan warga negara Indonesia di luar negeri untuk bekerja bukanlah hal baru. Pengiriman atau penempatan ini bertujuan agar kebutuhan ekonomi mereka terpenuhi dan juga sebagai penambah devisa negara. Tenaga kerja Indonesia di luar negeri biasanya bekerja di ranah domestik (cth: asisten rumah tangga). Data menyebutkan bahwa pekerja migran Indonesia di luar negeri yang berhasil ditempatkan di negara tujuan mayoritas adalah perempuan dan yang perlu kita ketahui bahwa para perempuan yang bekerja di luar negeri sebagai PMI adalah orang-orang yang bekerja di lingkungan yang rentan. Apalagi, banyak dari mereka yang mengalami kekerasan seksual berbasis gender dikarenakan mereka tidak memiliki pilihan untuk bekerja. Maka dari itu, harus ada perlindungan bagi mereka agar kekerasan seksual berbasis gender yang terjadi para pekerja migran Indonesia di luar negeri dapat ditangani dengan baik dan maksimal.

**Kata Kunci:** Perempuan; Pekerja Migran; Kekerasan Berbasis Gender; Tenaga Kerja Indonesia.

### ABSTRACT

Sending or placing Indonesian citizens abroad to work is not new. This transfer or placement aims to fulfill their economic needs and also as an addition to the country's foreign exchange. Indonesian workers abroad usually work in the domestic sphere (e.g.: household assistants). The data shows that the majority of Indonesian migrant workers abroad who have been successfully placed in destination countries are women and what we need to know is that women who work abroad as PMI are people who work in vulnerable environments. Moreover, many of them experience gender-based sexual violence because they have no choice of work. Therefore, they must be protected so that gender-based sexual violence that occurs among Indonesian migrant workers abroad can be properly and optimally handled.

**Keywords:** Woman; Migrant Workers; Gender Based Violence; Indonesian workers.

## A. INTRODUCTION

The phenomenon of migrating people abroad to work or live is not new in Indonesia. The factor that causes this displacement is the economic factor. When viewed from the condition of the population in Indonesia, it is the economic factor that has the most influence in terms of someone migrating abroad. In addition, the welfare factor is also a trigger for this.<sup>1</sup> According to data from training awareness to PMI victims of gender-based sexual violence and trafficking in persons, 95% of PMI who are sent or work abroad are women and many of them work in vulnerable sectors such as domestic work (domestic sector). The large number of women who decide to work abroad in the domestic or informal sector is not without reason, the main trigger is the patriarchal culture where society always places women in class 2 and deserves to work in the informal sector with low salaries or wages.<sup>2</sup> While data from the world bank in 2017, Indonesian workers sent abroad total 9 million people, increasing from year to year.

Sending Indonesian workers abroad is one way for the Indonesian government to reduce the number of unemployed.<sup>3</sup> Actually, this method is quite helpful in reducing the number of unemployed in Indonesia, however, what needs to be further criticized is how the Indonesian government can improve

<sup>1</sup> Aga Natalis dan Budi Ispriyarso, *Politik Hukum Perlindungan Migran Perempuan di Indonesia*, Jurnal Pandecta, Vol., 13, No., 2, 2018, Pp., 110.

<sup>2</sup> Diah Ayu Intan Sari, dkk., *Karakteristik Gender Kebijakan Perlindungan Pekerja Migran Indonesia di ASEAN*, Jurnal of Feminism and Gender Studies, Vol., 1, No., 1, 2021, Pp., 31.

<sup>3</sup> Dewi Asri Puanandini, *Penegakan Hukum Tindak Pidana Perdagangan Orang Pekerja Migran Indonesia*, Jurnal Hukum dan Kemanusiaan, Vol., 19, No., 2, 2020, Pp., 264.

the quality of education in Indonesia, with this increase in education in Indonesia, Indonesian workers abroad can have good competitiveness. However, the sending of Indonesian workers raises new problems. Problems for overseas migrant workers arise when there is no legal protection for them.<sup>4</sup>

One of the problems is that there is discrimination and violence that occurs to Indonesian Migrant Workers because of this, so protection for them is essential. This protection must be carried out since the migrant workers are still in Indonesia until their return to Indonesia. Migrant workers have the right to be protected, they also have the right to choose a job according to the competence they have, as well as the right to obtain information about the work they will do in the future. This protection must be carried out in accordance with the existing statutory provisions in Indonesia and in the countries where migrant workers work.<sup>5</sup>

In addition to providing protection, providing law enforcement for migrant workers, especially women migrant workers, is equally important. Because according to awareness-raising training for PMI victims of gender-based sexual violence, there are 75% of Indonesian migrant workers often experience discrimination by employers and this incident is not reported to local authorities such as the Indonesian embassy. This is due to a lack of law enforcement and a lack of empowerment for Indonesian migrant workers. The existence of discrimination and vulnerability during their work can lead to violence. This is very irrelevant to the protection of workers according to *Equal Remuneration Convention* No. 100 where there must be equality between workers, both women and men. This means that these workers should not be discriminated against by anyone.

In Indonesia itself, the protection of migrant workers has been regulated in Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers or the PPMI Law. However, in practice, this law is still not optimal to fully protect migrant workers. This happens because the law on the protection of Indonesian migrant workers still does not have derivative regulations from Government Regulations and Ministerial Regulations, because there is a vacuum in these derivative regulations, the PPMI Law still cannot be fully implemented, moreover, there are still many cases of violence that have occurred in Indonesian migrant workers, especially in the informal sector such as domestic helpers, *babysitter*, etc.<sup>6</sup> In addition, the government's focus on placing migrant workers rather than on fulfilling their rights to migrant workers dominates in terms of economic development in Indonesia. This domination is also one of the triggers for violence against Indonesian migrant workers.<sup>7</sup>

Protection for migrant workers is a very important issue both domestically and abroad and in this case, is the receiving country of Indonesian migrant workers. Moreover, the immigration process carried out by Indonesian migrant workers is a cycle starting from the registration of prospective Indonesian workers, departure, living, or working in the destination country to the process of returning the Indonesian workers. Therefore, various parties inside and outside the country play an important role for migrant workers to get protection, especially since the many cases of violence they experience while they work are something to worry about.<sup>8</sup>

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## B. RESEARCH METHODS

This research method is qualitative, in which the study of Indonesian Law and International Law regarding violence and how the application of legal protection for victims. This proves that the formation of these provisions with a fair method prevents the inability of law enforcement to implement these provisions.

The following describes the legal research structure used in this study, namely: 1. Type of Research 2. Problem Approach 3. Sources of Legal Materials 4. Techniques for Collection and Processing of Legal Materials 5. Techniques for Analysis of Legal Materials.

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## C. DISCUSSION AND ANALYSIS

### 1. Indonesian Migrant Workers

According to Article 1 point 2 of Law Number 18 of 2017 Concerning the Protection of Indonesian Migrant Workers, the definition of an Indonesian migrant worker is any Indonesian citizen who will, is currently doing, or has been doing work for wages outside the territory of the Republic of Indonesia. This definition does not explain explicitly whether the migrant workers referred to are male or female, but what can be concluded is that Indonesian migrant workers can include any gender. The mechanism for placing Indonesian migrant workers abroad is as follows:

1. *Private to Private* (P to P) Placements facilitated by the Indonesian Migrant Worker Protection Agency (BP2MI) but also involving private parties from Indonesia or what is known as Indonesian Migrant Workers Placement Companies (P3MI) and recipient countries.
2. *Government to Government* (G to G) Placement facilitated by the Government of Indonesia refers to the MoU between the Government of Indonesia and the Government of the recipient country.

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<sup>4</sup> Hartono Widodo dan R. Jossi Belgradoputra, *Perlindungan Pekerja Migran Indonesia*, Jurnal Binamulia Hukum, Vol., 8, No., 1, 2019, Pp., 108.

<sup>5</sup> *Ibid.*, Pp., 112.

<sup>6</sup> *Op.Cit.*, Pp., 39.

<sup>7</sup> Solechan, dkk., *Upaya Meningkatkan Jaminan Pekerja Migran Indonesia*, Administrative Law and Governance Journal, Vol., 2, No., 1, 2020, Pp., 155-156.

<sup>8</sup> Mita Noveria, dkk., *Perlindungan Pekerja Migran Indonesia*, Cetakan Ke-1, Yayasan Pustaka Obor Indonesia, Desember 2020, Pp., 3.

3. *Government to Private (G to P)* Placement facilitated by the Government of Indonesia refers to the cooperation agreement between the Government of Indonesia and the private sector in the recipient country.

4. *Intern Corporate Transfership (ICT)* Placement for Indonesian companies that get projects overseas and want to bring in workers from Indonesia to work on the said project.

5. Individual Indonesian Migrant Workers (Independent) Indonesian Migrant Workers who will work abroad without going through placement agencies. The requirements for Individual PMIs are that they have been accepted to work for an Employer with a Legal Entity, work for an Employer with a Legal Entity, and are not employed in the lowest position in each sector.<sup>9</sup>

The following is a table of data on the placement/delivery of Indonesian Migrant Workers Abroad:

#### A. Number of Placement of Migrant Workers from Year to Year

Year	Total
2019	276.553
2020	113.173
2021	72.624
2022	200.761
2023 (Hingga April 2023)	5.784

Source: <https://bp2mi.go.id/>

The highest number of placements for Indonesian migrant workers was in 2019 with a total of 276,553. However, in 2020-2021, the number has decreased dramatically. The trigger for this decline was the limited sending of Indonesian migrant workers abroad due to the Covid-19 pandemic. At that time, many national borders were closed, so the sending of TKI abroad in that 1 year decreased. According to the Minister of Economy, the decrease in the number of PMI placements in 2020 was 59% and the reduction in remittances was 17.5% compared to 2019. The enactment of the Minister of Manpower Decree (Kemennaker Decree) 151/2020 in March 2020 concerning the Temporary Suspension of PMI Placements caused the number of placements PMIs are dropping<sup>10</sup> Until 2022, the number of placements starts to increase again.

#### B. Number of Indonesian Migrant Workers by Country of Placement

Year	Total of TKI
2019	3.742
2020	3.227 (jumlah rata-rata)
2021	3.326 (jumlah rata-rata)
2022	3.436
2023	3.498

Source: website Bank Indonesia <https://www.bi.go.id/>.

According to data from Bank Indonesia, the number of Indonesian citizens by country of placement who became migrant workers in the past 5 years has decreased from 2019 to 2020, but from 2021-2023, the number has increased. The countries that receive the most Indonesian migrant workers are Malaysia in the ASEAN Region, Hong Kong in the Outside ASEAN Region, Australia in the Australia and Oceania Region, Saudi Arabia in the Middle East Region, South Africa in the African Region, the Netherlands in the European Region, and the Americas. whose country is not specified The following is data on Indonesian citizens who have become Migrant Workers abroad in the last 5 years.

## 2. Gender-Based Violence

In general, gender-based violence involves several parties, but the parties that experience the most violence are usually women. This violence occurs because there is a patriarchal culture inherent in society that places women's position always below men. This violence can be in the form of physical, verbal, or sexual violence.<sup>11</sup>

Based on Article 1 of the 1993 Declaration on the Elimination of Violence Against Women, it is known that violence against women is a manifestation of historical inequality from power relations between men and women which has resulted in domination and discrimination against women by men and obstacles to women's progress.<sup>12</sup> In line with this, gender-based violence is not a simple symptom that can be easily recognized immediately (Harmoko, 2010). On this basis, in 1992, the 2nd session of the Committee on the Elimination of Discrimination Against Women (CEDAW) issued General Recommendation Number 19 which stated that gender-based violence is a form of discrimination that is a serious obstacle to women's ability to enjoy their rights and freedoms on an equal basis. rights with men.<sup>13</sup>

<sup>9</sup> [https://disnakertrans.serangkota.go.id/content/uploads/syarat\\_dan\\_alur\\_rekom\\_paspor.pdf](https://disnakertrans.serangkota.go.id/content/uploads/syarat_dan_alur_rekom_paspor.pdf)

<sup>10</sup> <https://www.ekon.go.id/>, Menko Airlangga: Lindungi dan Tingkatkan Kualitas Pekerja Migran Indonesia di Masa Pandemi, accessed on June 6, 2023.

<sup>11</sup> Ani Purwanti, *Kekerasan Berbasis Gender*, Cetakan Pertama, Penerbit Bildung, Jogjakarta, 2020, Pp., 1.

<sup>12</sup> Sitepu, Anwar, *Tindak Kekerasan Terhadap Perempuan Pekerja Migran*, Jurnal Informasi, Vol., 16, No., 1, 2011, Pp., 64.

<sup>13</sup> Anggreany Arief, *Fenomena Kekerasan Berbasis Gender dan Upaya Penanggulangannya*, Jurnal Petitum, Vol., 6, No., 2, 2018, Pp., 78.

The phenomenon of violent reality (*violence*) this is actually counter-productive/contradictory to the Second Precepts of Pancasila, namely 'Just and Civilized Humanity', in which the description of the precepts concept places more emphasis on public acknowledgment to treat human beings according to their dignity and worth as creatures of God Almighty; acknowledgment of equality, equal rights and basic obligations of every human being, without discriminating between religion, belief, sex/gender, skin color, descent, ethnicity, and social position; and the concept of sila focuses on developing an attitude of mutual love for fellow human beings.<sup>14</sup>

The following table contains data on complaints from Indonesian migrant workers:

Period	Total of PMI Complaints
2019	5.824
2020	1.811
2021	1.700
2022	1.987
2023	592

Source: <https://www.cnbcindonesia.com/>

Based on the data above, the highest number of complaints was in 2019, while from 2020 to 2021, the number has dropped dramatically. Various cases have been reported, including fulfilling the rights of migrant workers, such as wages not being paid by employers, loss of contracts, repatriation of bodies, to allegations of violence perpetrated by employers. Apart from that, Komnas HAM also noted that there was an increase in the percentage of PMI women who increased drastically during the pandemic, namely 88%. With an increase in the number of female migrant workers, there is a vulnerability in their position as migrant workers who experience gender-based violence.<sup>15</sup>

### 3. Legal Protection for Victims

The definition of the victim according to *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power General Assembly resolution 40/34* in the Year of 1985 the number 1 is "Victims" which means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power or in general a victim is someone who experiences physical, mental, and economic losses as a result of a crime and abuse of power.<sup>16</sup>

Legal protection is an effort provided by society and the government so that victims get their rights back. In this case, protection efforts must uphold human rights. Human Rights (HAM) is a priori right and are a gift from the supreme creator, namely God Almighty since humans existed or were born. Because of this, human rights and the protection of human rights are closely related to human existence as God's most perfect servant among His other creatures.<sup>17</sup> Where the law is basically a reflection that contains justice, and the law no longer looks at the mere reflection of power, but must also reflect the protection of all its citizens<sup>18</sup>.

This legal protection is aimed at Indonesian migrant workers abroad who experience gender-based violence. In its own application, Indonesia already has a law to protect PMI, namely Law No. 18 of 2017 concerning the Protection of Migrant Workers, as well as Law No. 6 of 2012 concerning the Ratification of the International Convention Concerning the Protection of the Rights of All Migrant Workers and Members of Their Families. Whereas in International Law itself, the legal umbrella for PMI victims of gender-based violence and trafficking in persons is contained in the Protocol to Prevent, Prosecute and Punish Trafficking in Persons, especially women and children which was formulated in Italy in 2000<sup>19</sup>.

According to the author, the case of Indonesian migrant workers abroad brings its own concerns. Moreover, many reported that most of these cases were cases of violence against Indonesian migrant workers. One example is the case of Adelina Lisao, an Indonesian worker who came from NTT. From the news that the author read, Adelina Lisao experienced violence from her own employer when she worked as a household assistant. For a moment he was found by local residents, all over his body there were many wounds that were not treated. While she was working, Adelina was often beaten and tortured. According to the news the author read, Adelina slept in a dog kennel and did not get food. Until when he was found, Adelina's body was very thin. A day after being found, Adelina finally breathed her last. Adelina died due to malnutrition and a wound infection that was not treated.

<sup>14</sup> Yuliyanto Budi Setiawan, *Analisis Wacana Kritis Pemberitaan Kekerasan Berbasis Gender di Surat Kabar Harian Suara Merdeka*, Jurnal Ilmiah Komunikasi Makna, Vol., 2, No., 1, 2011, Pp., 13-14.

<sup>15</sup> <https://www.tribunnews.com/>, *Komnas Perempuan Catat 813 Kasus Kekerasan terhadap Perempuan Pekerja Migran Pada Tahun 2016-2022*, accessed on June 6, 2023.

<sup>16</sup> Iin Ratna Sumirat, *Perlindungan Hukum Terhadap Perempuan dan Anak Korban Kejahatan Perdagangan Manusia*, Jurnal Al-Ahkam, Vol., 13, No., 2, 2017, Pp., 2.

<sup>17</sup> Syaifullah Yophi Ardianto, *Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Perdagangan Orang di Kota Pekanbaru*, Jurnal Ilmu Hukum, Vol., 3, No., 1, Pp., 2.

<sup>18</sup> *Ibid.*, Pp., 9-10.

<sup>19</sup> Safrida Yusitarani dan Nabiatu Sa'dah, *Analisis Yuridis Perlindungan Hukum Tenaga Migran Korban Perdagangan Manusia Oleh Pemerintah Indonesia*, Jurnal Pembangunan Hukum Indonesia, Vol., 2, No., 1, 2020, Pp., 29.

The case of violence against Adelina is not the first case that has happened to Indonesian migrant workers, most of whom work in vulnerable sectors. Previous cases are equally worrying. The protection of these migrant workers has actually been regulated in Indonesian laws and regulations and international conventions. In Indonesia itself, the laws governing the protection of Indonesian migrant workers are contained in Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, in addition to that Indonesia has ratified an international convention on the protection of migrant workers which was ratified in Law Number 6 of 2012 concerning Ratification of the International Convention Concerning the Protection of the Rights of All Migrant Workers and Members of Their Families.

In Article 6 paragraph (1) letter d of Law Number 18 of 2017, it is stated that "every prospective Indonesian migrant worker and Indonesian migrant worker has the right to obtain professional and humane services and treatment without discrimination before working, while working, and after work". In addition, Law Number 18 of 2017 Concerning the Protection of Indonesian Migrant Workers in Article 3 states that:

- a) Ensure the fulfillment and enforcement of human rights as citizens and Indonesian Migrant Workers; And
- b) Ensure legal, economic, and social protection for Indonesian Migrant Workers and their families.<sup>20</sup>

Discrimination against migrant workers is something that is prohibited by law, moreover, the nature of discrimination is very detrimental to Indonesian migrant workers. According to Article 1 Number 3 of Law Number 39 of 2019 concerning Human Rights "Discrimination is any restriction, harassment, or exclusion that is directly or indirectly based on human differentiation on the basis of religion, ethnicity, race, ethnicity, group, class, social status, economic status, gender, language, political beliefs, which result in reduction, deviation or elimination of the recognition, implementation or use of human rights and basic freedoms in life both individually and collectively in the political, economic, legal, social, cultural and life aspects other"

Article 3 Paragraphs (2) and (3) of Law No. 39 of 1999 states that:

- (2) Everyone has the right to recognition, guarantee, protection, and fair legal treatment and to get legal certainty and equal treatment before the law.
- (3) Everyone has the right to protection of human rights and basic human freedoms, without discrimination.

Judging from these two paragraphs when applied to cases of violence by Indonesian migrant workers abroad, migrant workers who are victims of violence have the right to get legal protection. Moreover, the Indonesian government has regulated the protection of its citizens.

The central government and local governments have a very important role in the continuity of welfare for Indonesian migrant workers, article 33 of Law Number 18 of 2017 states that "The Central Government and Regional Government provide legal protection for Indonesian Migrant Workers in accordance with the provisions of the legislation." invitation, the law of the destination country, as well as international law and customs." International law governing the protection of workers is contained in the conventions of the International Labor Organization Numbers 100 and 155. In the global labor organization conventions number 100 or *Equal Remuneration Convention* No. 100 where there must be equality between workers, both women and men. This means that no one should discriminate against these workers.

Meanwhile, Article 4 Number 2 *Occupational Health and Safety Convention, 1981 number 155* mentions that "*The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.*" The purpose of this policy is to prevent accidents and health problems that arise, are related to, or occur in the course of work, by minimizing as far as is reasonably practicable, the causes of inherent hazards in the work environment. Even though this convention has not been embodied in articles in Indonesian laws and regulations, this convention can be used as a reference in international law to protect migrant workers.

According to the author, this convention has stated how an employer must create a good working environment for workers, for example, no exploitation of workers, a work environment that makes workers feel safe, and no violence experienced by workers, and this is what is meant by Indonesian migrant workers. Violence perpetrated by employers against Indonesian migrant workers is very irrelevant to one of the articles in this convention because it can be seen from the purpose of this convention is to minimize the occurrence of work accidents or an unhealthy work environment. Protection in the science of law intends to provide legal certainty from its implementation and at the same time provide protection for workers. Therefore, to ensure proper implementation so as to achieve the goal of protecting workers<sup>21</sup>

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## D. CONCLUSION

Moving someone to work abroad is a way for that person to survive. The transfer of a person to work abroad has many factors, the main factor being the economic factor. Economic factors cause someone from a developing country to seek work in a more developed country. Moreover, the stereotypes about developing countries that promise better welfare. This move is also one of the benefits for the Indonesian government in order to reduce the unemployment rate in Indonesia. However, sending someone abroad to work does not mean that it will solve all the problems that exist in this country. The Indonesian government should fix the main triggers of problems such as how is the quality of education in Indonesia, if the quality of Indonesian education is

<sup>20</sup> Gracia Tambajong, dkk., *Tindak Pidana Melaksanakan Penempatan yang Tidak Memenuhi Persyaratan Pekerja Migran Indonesia Menurut Undang-Undang Nomor 18 Tahun 2017 Tentang Perlindungan Pekerja Migran Indonesia*, Jurnal Lex Administratum, Vol., 9, No., 2, 2021, Pp., 81.

<sup>21</sup> Elias Yulio Kristiadi, dkk., *Perlindungan Hukum Terhadap Pekerja Migran Indonesia*, Jurnal Pendidikan Kewarganegaraan Undiksha, Vol., 10, No., 1, 2022, Pp., 315.

improved, it is possible that Indonesian workers will not have to venture abroad to find work. This is what ultimately triggers a new problem, namely the problem of violence that occurs against Indonesian migrant workers abroad.

Based violence phenomenon gender protection for Indonesian migrant workers, especially women migrant workers, should be maximized. Their vulnerability in the employment sector and lack of empowerment are the main factors behind this violence. Sending countries and receiving countries should continue to work together to reduce similar incidents so that Indonesian migrant workers abroad can fully enjoy their rights. In addition, the local community should be a safe place for victims of violence, especially sexual violence, because this alignment makes migrant workers feel safe and not intimidated or discriminated against. There is a need for public awareness as well as local government awareness to continue to provide protection for victims.

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